

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	NO. 4:12CR252
	§	Judge Crone
ARMANDO IBARRA (5)	§	
a/k/a Fat Boy	§	
JULIO CESAR MALDONADO-GONZALEZ (6)	§	
a/k/a Burqueti	§	
ANTONIO NAVAREZ REYES (7)	§	
a/k/a Tonio	§	
JORGE LUIS RAMIREZ (8)	§	

GOVERNMENT’S PROPOSED VOIR DIRE QUESTIONS

The United States of America by and through the undersigned Assistant United States Attorney, G.R. Jackson, in and for the Eastern District of Texas, and respectfully requests that this Honorable Court ask the following questions of the jury panel as follows:

1. Do any of you, or does any member of your family or do any of your close friends, to the best of your knowledge, know the defendants, or any member of their respective families or any of the attorneys representing the defendants?

(a) If so, please state, to the best of your ability, how, or under what circumstances?

(b) If these defendants are known to you, your family, or your friends, or any member of their family, would this influence your ability to sit as a juror in this case?

- (c) If you have had any connection with the defendants, would it affect your ability to be fair and objective towards both the United States and the defendants in your consideration of the evidence in this case?

2. Have any of you, your relatives, or your close friends or acquaintances had an unpleasant experience with or been or believed yourself to have been the subject of an investigation by any law enforcement agency for any matter more serious than a traffic ticket? **[If so, the government requests the prospective juror be questioned at the bench.]**

3. Have any of you or any of your relatives or close friends ever been arrested or convicted for a crime triable in any federal or state court more serious than a traffic violation? **[If so, the government requests the prospective juror be questioned at the bench.]**

- (a) Please provide details, i.e., offense, date, result.
- (b) Is there anything about that experience that would make you unable to render a fair and impartial verdict both to the defendants and the United States?

4. Have any of you, your relatives, close friends, or associates ever been a party to any legal action or proceeding involving the United States, or any state or local government, either as a complainant, defendant, plaintiff, accused, character witness, or victim, or any action involving any officer, agent or employee of the federal, state or local government?

- (a) Unless this involves a private matter which you would prefer to discuss at the bench, please describe the circumstances?
 - (b) If so, has that experience affected your ability to be fair and objective towards both the government and the defendants in your consideration of the evidence in this case?
- 5. Have any of you ever served on a trial jury in either federal or state court?
 - (a) If so on a petit jury, was it a civil or criminal case?
 - (b) If criminal, what were the charges against the defendant, and did the jury reach a verdict?
 - (c) Is there anything in that experience which would make it difficult for you to be fair and objective towards both the government and the defendants in your consideration of the evidence in this case?

LEGALIZATION OF DRUGS

- 6. Does any member of the panel believe that drugs, including marijuana, cocaine and heroin, should be legalized?
- 7. Does any member of the panel believe that the drug laws, including laws criminalizing marijuana, are too harsh in any respect?
- 8. Does any member of the panel believe that too many man-hours, too much money, or too many resources or government effort is spent in the investigation or enforcement of federal, state and local laws against drug possession, trafficking or sale?

THE LAW OF CONSPIRACY

9. Count One of the Superseding Indictment charges the Defendants with the criminal offense of conspiracy to commit a crime. As I will instruct you in more detail in the Court's Charge to the Jury at the close of all of the evidence, a conspiracy is an illegal agreement. Conspirators do not always enter into formal express agreements. Would anyone require the United States to prove there was an "express agreement?" Does everyone understand that an illegal agreement can be proven by circumstantial evidence?

Once a person knowingly joins this partnership in crime, that person or co-conspirator is responsible for the acts of his co-conspirators committed in furtherance of the conspiracy if such acts were reasonably foreseeable. Would any member of the panel have a problem applying such a standard?

10. In a criminal conspiracy, the illegal agreement in and of itself, is a crime. An individual does not personally have to commit an act in furtherance of the conspiracy in order to be guilty of a conspiracy. For instance, in a bank robbery conspiracy, it is possible for one to be a co-conspirator if, with the intent that a bank robbery be committed, he merely draws a floor plan of the bank, notes surveillance camera postings, and gives this floor plan to his associates who he knows intend to use it to rob the bank. Does anyone have a problem with that concept?

EVIDENTIARY ISSUES

11. There are basically two kinds of evidence, "direct evidence" and "circumstantial evidence." "Direct evidence" is the testimony of one who asserts actual

knowledge of a fact, such as an eye witness. “Circumstantial evidence” is proof of a chain of facts and circumstances indicating that the defendants are either guilty or not guilty.

For example, if a dog runs through fresh snow and someone sees that dog run through the snow and that individual is later called to testify that he saw the dog run through the fresh snow, that would be eyewitness testimony or direct evidence that the dog ran through the snow.

However, if an individual arrives after the dog runs through the snow and sees the paw prints left in the fresh snow and that individual is later called to testify that he saw paw prints in the fresh snow, that would be circumstantial evidence that an animal ran through the snow.

The law makes no distinction between the weight you may give to either direct or circumstantial evidence. Do any of you feel you could not give just as much weight to circumstantial evidence as you do direct evidence? Do any of you feel that you could not rely on circumstantial evidence that you believed beyond a reasonable doubt to find a defendant guilty? Do any of you know that you would require the government to present an eye witness to an event before you could find a defendant guilty?

Typically, circumstantial evidence is the only type of evidence that can be presented to establish a defendant’s intent or knowledge. Do any of you feel that you could not exclusively rely on circumstantial evidence to establish a defendant’s intent or knowledge?

12. Your duty, as jurors, is merely to decide guilt or innocence based upon the evidence and my instructions to you on the law, which you must apply in your

deliberations. Your own views as to whether a particular law or rule of evidence is right or wrong cannot play any part in your deliberations and review of the evidence. Is there anyone who feels that you cannot accept my instructions on the law and apply those instructions in your consideration of the evidence?

BURDEN OF PROOF

13. In a criminal trial, the Government's burden of proof is "beyond a reasonable doubt." The only way the Government could prove the Defendants' guilt to you beyond all doubt would be if you were an eyewitness. If you were an eyewitness to this alleged crime, you would not be eligible to serve on this jury panel; therefore, it is logical that the Government's burden is only "beyond a reasonable doubt" and not "beyond all doubt."

The United States' burden is only that the essential elements of the crime be proven beyond a **reasonable doubt**.

Proof beyond a reasonable doubt is based on common sense and reason. The law defines that proof beyond a reasonable doubt is proof of such a convincing character that you would be willing to rely and act on it in the most important of your own affairs without hesitation. In determining whether a matter has been proven according to this standard, you must arrive at your individual and collective decision by careful and impartial consideration of the evidence in this case, always filtering everything through your common sense and reason. The Court will not provide you with a definition of common sense, but, you may consider that common sense is that body of knowledge that you each have, based on a lifetime of experiences, teachings, dealing with your fellow man, with

seeing the people at their best and at their worst....and all of our experiences are unique----so, it's that collective wisdom and common sense that will bring you to a decision as to whether the United States has proven its case beyond a reasonable doubt.

- (a) Does any member of the panel have a problem with the concept of "beyond a reasonable doubt?"
- (b) Would any member of the panel hold the government to a higher burden of proof than merely "beyond a reasonable doubt?"

DEFENDANT'S 5TH AMENDMENT PRIVILEGE

14. A criminal defendant in our criminal justice system has many rights. One of those rights is the right not to testify- you may have commonly heard this referred to as the right against self-incrimination. If a criminal defendant chooses to exercise his right against self-incrimination, you cannot consider that for any purpose.

Is there anyone here who would hold it against a criminal defendant if he were to invoke his right against self-incrimination?

On the other hand, if the defendant does give up his right against self-incrimination and testify, you cannot give him any extra credit because you know that he did not have to testify and chose to give up his right against self-incrimination.

Is there anyone here who would be more inclined to believe a defendant who chooses to testify given that you know he has a right not to testify?

WITNESS ISSUES

15. Many times the eyewitnesses to criminal events were themselves somehow involved in the crime. Just like criminal defendants, witnesses have a 5th Amendment privilege against self-incrimination.

The Government may make application with me, the Court, for permission to give a witness immunity. If I, the Court, approve the grant of immunity, then the witness no longer has a privilege against self-incrimination and that eye witness can be forced to testify to the criminal events that he observed.

Once I have approved a grant of immunity to a witness, if that witness refuses to testify, he can be held in contempt of court.

Usually, the grant of immunity does not mean that the witness can never be prosecuted for his role in the crime, it merely means that the witness' testimony cannot later be used against him if he is prosecuted.

Is there anyone here who has a problem with this Court approving the grant of immunity to people who have themselves possibly been involved in the criminal activity?

Is there anyone here who believes that it is unfair for this Court to take away a witness' right against self-incrimination and, thereby, force him to provide information about criminal events?

16. Does anyone feel that a person who has been convicted of a crime should be prevented from testifying in a Court of Law?

17. Would any member of the panel automatically reject the testimony of a witness who may have been convicted of a crime?

18. In this case, the evidence may develop that one or more of the witnesses are former co-conspirators who are cooperating with the United States in its prosecution. Would any of you automatically reject the testimony of a co-conspirator?

19. The law does not require that the testimony of a co-conspirator be corroborated, or backed-up, by independent evidence. Often, the only individuals with personal knowledge that a person committed the crime are co-participants. The law, accordingly, as I will instruct more fully, in the Court's charge, provides that you may base your verdict solely on the uncorroborated testimony of a co-conspirator. Do any of you disagree, personally, with the law on that point, in that you would or may, consciously or otherwise, require that the United States independently corroborate, or back-up that person's testimony with independent evidence, beyond that which is required by the law, before you could ever believe that witness? Can you assure the Court and the attorneys that you would each openly consider the uncorroborated testimony of a co-conspirator, along with all the other evidence?

20. Often times, the Government calls criminal defendants who were charged in the same indictment as the defendants who sit before you and who have invoked their right to a jury trial.

These defendants who may now be witnesses have made plea bargain agreements with the Government in which they have pled guilty to charges against them and have

agreed to provide eye witness testimony against the remaining defendants who have chosen to go to trial.

Often, these defendants who testify are hoping that I will reduce the sentence they have received because they have cooperated.

You are entitled to take into account that these witnesses have entered into plea agreements with the Government and have been found guilty of a crime in determining their credibility.

However, the fact that a witness has entered into a plea agreement with the Government or that a witness may hope that I will reduce his sentence because he has cooperated, does not disqualify a witness' testimony. In fact their testimony alone may be sufficient to convict the defendants if you believe their testimony beyond a reasonable doubt.

As I will instruct you who are named as jurors in this case, such plea bargaining, as it is called, has the approval of the Courts, and is not uncommon.

- (a) Is there anyone who believes that plea bargaining is not appropriate?
- (b) Is there anyone who would automatically reject the testimony of a witness who had entered into a plea bargain?
- (c) If you believe a witness was treated too leniently by the United States in the plea bargaining process, yet you otherwise believe the Government has met its burden as to a particular crime about which the witness who was the recipient of the favorable plea bargain is

crucial, will you assure the Court that you will not fashion your decision on the evidence to merely send a message that you believe a particular witness received too favorable of a plea bargain agreement from the United States?

21. In any case involving eye witness testimony there is likely to be inconsistencies between eyewitnesses to the same event. This is because people, including law enforcement officers, are likely to see things from a different perspective or remember things differently. Inconsistencies, in and of themselves, do not necessarily mean a witness is not telling the truth if from the other testimony the witness gives you, you believe what that witness has to say. Do any of you feel or believe that simply because a witness has an inconsistency with another witness or with something he may have said or written before, you would not believe anything that witness testified to? If so, please explain.

PUNISHMENT

22. In the federal criminal justice system, unlike courts in the State of Texas, it is I, the Court, not the jury, who is charged with the responsibility of setting a just punishment in a criminal case. That occurs only after a pre-sentence investigation is done, taking into account matters that are relevant only to sentencing. You must decide the facts to determine if the United States has proven the charges beyond a reasonable doubt. Should you find the United States has proven its case, you will have no role in assessing punishment. You may not let any sympathy or compassion for a defendant, which may be

appropriate for sentencing, affect your decision in deciding whether the United States has proven its case. Is there anyone who has any difficulty whatsoever with that concept? Is there anyone here who would vote “not guilty,” no matter what the evidence indicates, because of the possibility that the Court may impose a jail sentence or any other particular sentence?

GENERAL

23. Does any member of the panel, or a family member or close friend of a panel member have, or have had in the past, a personal problem with drugs? **[If so, the government requests the prospective juror be questioned at the bench.]**

24. Is there anyone who as you sit there can think of anything, affecting your ability to serve as a juror in this case, which should be brought to the attention of the Court or counsel?

Respectfully submitted,

JOHN M. BALES
UNITED STATES ATTORNEY

/s/
G. R. JACKSON
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed via electronic mail to defense counsel on this the 5th day of August, 2014.

_____/s/_____
G.R. Jackson